

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the amendments above and the remarks below.

Pending claims 13, 14 and 16-37 are pending in the application and are rejected.

The Prior Art Rejections

Claims 13, 14, 16-20, 22, 24-31, 33, and 34 are rejected under 35 U.S. C. §103 over U.S. Patent No. 6,131,381 to Millbury in view of U.S. Patent No. 5,775,080 to Reithel and further in view of newly cited U.S. Patent No. 2,855,746 to Miller, Sr. It should be noted that the undersigned left a voice message for the Examiner on March 28th noting that Miller is listed under the §103 rejection but is not discussed in the body of the §103 rejection. In a voice message left on March 29th, the Examiner acknowledged uncertainty with regard to what was intended in the §103 rejection. In view of the claim amendments contained herein filed as part of a RCE application, Applicant believes the rejection is rendered moot.

Applicant amends claim 13 to require a grading rake including a plurality of *linear* tines extending from the rake head for grading particulate matter, wherein an interior angle between the plurality of tines and the handle *is fixed* and ranges from about thirty degrees to about sixty degrees. The plurality of tines include a *truncated end surface* forming an *angle* with a *longitudinal axis of the handle* ranging from about *plus ten degrees to negative ten degrees*.

Applicant submits that the invention required by amended claim 1 is clearly patentably distinguishable over the prior art of record. Applicant has clarified that the tines are *linear* in contrast to the non-linear tines in Milbury. Applicant has further clarified that the interior angle between the tines and the handle is *fixed*.

With regard to Milbury, Applicant points out that angle A is clearly limited to an obtuse angle. This feature is introduced as an "obtuse angle A is shown" at col. 11, line1. Milbury goes

on to explain at col. 11, line 5-6, that for “efficient performance of lawn rake 100 in raking action, angle A ranges from approximately 130° to 170°.” And further at col. 1. line 10, “[d]ue to the geometry established by obtuse angle A, angle B is necessarily larger than angle C.” It is clear that these relationships *require* that angle A be an obtuse angle.

Thus, it is clear that Milbury cannot be properly combined with references teaching non-obtuse angles. Moreover, Milbury is a lawn rake having no utility as a grading as claimed.

Reithel and Miller, Sr, merely teach hand rakes. Miller shows an adjustable angle and Reithel teaches a crosspiece 26 to remove weeds.

Applicant submits that it is not permissible for the Examiner to merely search the prior art using Applicant’s disclosure as a roadmap in an attempt to identify claimed features and then nakedly assert that the invention is obvious. This is an impermissible use of hindsight in an unsupportable determination of obvious. As the Examiner is well aware, there must be some identifiable motivation to combine the references as proposed.

The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

Applicant does not acquiesce to any assertion made by the Examiner and not specifically addressed herein.

Appl. No. 10/092,082
Reply to Office Action of December 3, 2004


Docket No. BAMB-007AUS

The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

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Respectfully submitted,

DALY, CROWLEY, MOFFORD & DURKEE, LLP

By: 
Paul D. Durkee
Reg. No. 41,003
Attorney for Applicant(s)
275 Turnpike Street, Suite 101
Canton, MA 02021-2354
Tel.: (781) 401-9988, X21
Fax: (781) 401-9966
pdd@dc-m.com

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